



Press and Information

Court of Justice of the European Union
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Judgment in Case C-42/17
M.A.S. and M.B.

The obligation to protect the financial interests of the EU must be reconciled with observance of the principle that offences and penalties must be defined by law

The Italian courts, in criminal proceedings concerning serious VAT fraud, are not therefore obliged to disapply the national limitation rules (on the basis of the Taricco judgment) if that conflicts with that principle

The Corte suprema di cassazione (Court of Cassation, Italy) and the Corte d'appello di Milano (Court of Appeal, Milan, Italy) have to adjudicate in criminal proceedings against Mr M.B. and Mr M.A.S. respectively, who are charged with serious fraud relating to VAT¹ and might escape conviction if the rules of the Italian Criminal Code on limitation had to be applied. The proceedings could, on the other hand, lead to a conviction if the limitation period laid down by those rules were disapplied on the basis of the principles stated by the Court of Justice in the Taricco judgment,² which was delivered after the offences were committed. In that judgment the Court interpreted Article 325 TFEU, under which the EU and the Member States have a duty to combat fraud and any other illegal activities affecting the financial interests of the EU and to afford effective protection to those interests.

In particular, the Court held in the Taricco judgment that the Italian law on the limitation period for VAT offences could infringe Article 325 TFEU if it prevented the imposition of effective and deterrent penalties in a significant number of cases of serious fraud affecting the financial interests of the EU, or provided for longer limitation periods for cases of fraud affecting national financial interests than for those affecting the financial interests of the Union. The Court also held that it was for the national courts to give full effect to Article 325 TFEU, if need be by disapplying the rules on limitation.

The Court of Cassation and the Court of Appeal, Milan, however, took the view that the principles following from the Taricco judgment could lead to a breach of the principle that offences and penalties must be defined by law, which is enshrined in the Italian Constitution. They therefore referred questions to the Corte costituzionale (Constitutional Court, Italy).

The Constitutional Court expressed doubts as to whether the approach in the Taricco judgment is compatible with the overriding principles of the Italian constitutional order and with observance of the inalienable rights of the individual. In particular, according to that court, that approach may clash with the principle that offences and penalties must be defined by law, which requires that rules of criminal law are precisely determined and cannot be retroactive. It therefore decided to ask the Court for clarification of the interpretation to be given to Article 325 TFEU in the light of the Taricco judgment.

By today's judgment, given in accordance with the accelerated procedure,³ the Court observes that Article 325 TFEU imposes on the Member States obligations as to the result to be achieved, which are not subject to any condition regarding their implementation. It is therefore for the competent

¹ As the EU budget is partly financed by VAT, there is a direct link between VAT fraud and the financial interests of the EU.

² Case: [C-105/14](#), Taricco and Others see Press Release No [95/15](#).

³ The accelerated procedure is provided for in Article 23a of the Statute of the Court of Justice and Article 105(1) of the Rules of Procedure of the Court.

national courts to give full effect to the obligations under Article 325 TFEU, in particular by applying the principles stated in the Taricco judgment. The Court also observes that it is primarily for the national legislature to lay down rules on limitation that allow for compliance with the obligations under Article 325 TFEU.

However, the Court notes that, according to the Constitutional Court, under Italian law the rules on limitation form part of substantive law, and are consequently subject to the principle that offences and penalties must be defined by law. In this context, it recalls, first, the requirements of foreseeability, precision and non-retroactivity of the criminal law which follow from the principle that offences and penalties must be defined by law, enshrined in the Charter of Fundamental Rights of the European Union and the Convention for the Protection of Human Rights and Fundamental Freedoms, and, second, that **that principle is of essential importance both in the Member States and in the EU legal order. Consequently, the obligation to ensure the effective collection of the EU's resources, following from Article 325 TFEU, cannot run counter to the principle that offences and penalties must be defined by law.**

Consequently, the Court concludes that if a **national court**, in proceedings concerning persons accused of committing offences relating to VAT, **considers that the obligation to apply the principles stated in the Taricco judgment conflicts with the principle that offences and penalties must be defined by law, it is not required to comply with that obligation**, even if compliance would allow a national situation incompatible with EU law to be remedied.

NOTE: A reference for a preliminary ruling allows the courts and tribunals of the Member States, in disputes which have been brought before them, to refer questions to the Court of Justice about the interpretation of European Union law or the validity of a European Union act. The Court of Justice does not decide the dispute itself. It is for the national court or tribunal to dispose of the case in accordance with the Court's decision, which is similarly binding on other national courts or tribunals before which a similar issue is raised.

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The [full text](#) of the judgment is published on the CURIA website on the day of delivery.

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